

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In Re:	§	Chapter 11
	§	
NEIGHBORS LEGACY HOLDINGS, INC., <i>et al.</i>,	§	Case No. 18-33836
	§	
Debtors.	§	(Jointly Administered)
	§	

**GREATER TEXAS EMERGENCY CENTERS LLC'S EXPEDITED MOTION FOR
FINDING REGARDING ASSET PURCHASE AGREEMENT**

(Relates to Docket No. 484)

NOTICE PURSUANT TO LOCAL RULE 9013-1

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FRIDAY, NOVEMBER 2, 2018 AT 9:45 AM IN COURTROOM 404, 4TH FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK AVENUE, HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Comes now, Greater Texas Emergency Centers LLC (“**Greater Texas**”) and files this motion requesting that the Court interpret and make a finding regarding the Asset Purchase Agreement (Doc. No. 484) entered into between Greater Texas and the Debtors¹ and in support thereof respectfully represents as follows:

¹ The Asset Purchase Agreement is between Greater Texas as Buyer, and the Operating Sellers, NEC Bellaire Emergency Center, LP, NEC Yorktown Emergency Center, LP, NEC Midland Emergency Center, LP, NEC Odessa Emergency Center, LP, NEC Texarkana Emergency Center, LP, NEC Paris Emergency Center, LP, and the

BACKGROUND

1. On July 12, 2018, the Debtors each commenced a case under Chapter 11 of the Bankruptcy Code. The Debtors Chapter 11 cases are being jointly administered pursuant to this Court's Order. (Docket No. 10). The Debtors continue to operate their businesses and manage their property as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. On September 6, 2018, the Court approved the sale of substantially all of the Debtors' assets to a consortium of bidders subject to completion of the respective asset purchase agreements between each purchaser the respective Debtors; Greater Texas was one such bidder. The order approving the sale of the Debtors assets to the consortium was entered on September 12, 2018 but provided that the form asset purchase agreement between Greater Texas and the Debtors was not finally approved. (Docket No. 482). A supplemental order was entered on September 14, 2018 which attached the final Asset Purchase Agreement (the "**APA**") between Greater Texas and the Debtors. (Docket No. 484).

Yorktown Facility

3. On September 8, 2018, NEC Yorktown Emergency Center, LP (the "**Yorktown**") filed its Schedules of Assets and Liabilities (the "**Schedules**"). (Docket No. 444). In the disclaimers preceding the Schedules, Yorktown disclosed all Debtors had not completed a physical inventory or appraisal of their equipment and did not historically maintain an itemized fixed asset detail.² (Docket No. 444 ¶¶ 6, 11).

Corporate Sellers, Neighbors Legacy Holdings, Inc., Neighbors Global Holdings, LLC, Neighbors Health, LLC, EDMG, LLC, and Neighbors Practice Management, LLC as Sellers.

² The disclaimers in both the Schedules and SOFA did provide that, "nothing in the Schedules or SOFAs (including, without limitation, the failure to list leased property or equipment as owned property or equipment) is or shall be construed as an admission as to the determination of legal status of any lease (including whether any lease is a true lease or financing arrangement), and the Debtors reserve all their rights with respect to such issues.

4. Contemporaneously with the filing of its Schedules, Yorktown also filed its Statement of Financial Affairs (the “**SOFA**”).³ (Docket No. 445). In answer to Question No. 21 of the SOFA, the Yorktown stated it did not hold or control property for another person or entity. The disclaimers did not provide any additional detail as to SOFA Question No. 21. (Docket No. 445 ¶ 21).

5. On or about October 9, 2018, a representative of Greater Texas made a site inspection of the Yorktown emergency center (the “**Yorktown Facility**”). The Yorktown Facility is comprised of a 15,000 sq. ft. During the inspection, Greater Texas’ representative found tangible personal property, including a number of medical equipment items. The medical equipment items included but were not limited to approximately 36 medical stretchers and special mattresses; triage and EKG machines; and, a large quantity of medical supplies (the “**Medical TPP**”). The representative of Greater Texas did not take a physical inventory of the Medical TPP at that time of the inspection.

6. The APA provides that Greater Texas would buy all rights, title and interest in all tangible personal property, including equipment (including medical equipment and instruments) of any kind or type that was owned by the seller, used at the Acquired Business⁴, or located at or within any acquired Facility⁵. Section 2.01(a)(iii) of the APA provides:

³ The disclaimers in both the Schedules and SOFA did provide that, “nothing in the Schedules or SOFAs (including, without limitation, the failure to list leased property or equipment as owned property or equipment) is or shall be construed as an admission as to the determination of legal status of any lease (including whether any lease is a true lease or financing arrangement), and the Debtors reserve all their rights with respect to such issues.”

⁴ An Acquired Business is defined in the APA as the business conducted by the seller at a Facility.

⁵ A Facility is defined in the APA as an operating emergency center that was sold pursuant to the APA which would necessarily include the Yorktown emergency center.

Section 2.01 Purchase and Sale of Assets.

(a) Subject to, and on the terms and conditions of this Agreement, effective at the Effective Time, Buyer shall purchase, acquire, and accept from the Sellers, and the Sellers shall sell, convey, transfer, assign, and deliver to Buyer free and clear of any and all Liens, Claims, and Interests of any kind or nature whatsoever, whether arising prior to, on or subsequent to the Petition Date, (other than Specifically Assumed Liabilities), all rights, title, and interest of every kind and nature of Sellers (including indirect and other forms of ownership), in and to all of the assets, properties, rights and interests set forth below solely to the extent related to the Acquired Business (the "*Transferred Assets*");

(iii) all equipment (including medical equipment and instruments), furniture, furnishings, computer hardware, communication equipment, supplies, fixtures, leasehold interests, materials, Inventory and other tangible personal property of any kind or type that is owned by the Operating Sellers, used in the Acquired Business or located at or within any Facility;

7. As a result, Greater Texas understood all equipment at the Yorktown Facility would be transferred to Greater Texas as part of the APA.

8. On or about October 10, 2018, Greater Texas learned that the Debtor(s) had moved a substantial amount of the Medical TPP, including the medical stretchers, from the Warehouse to an unknown location. After learning of the move, Greater Texas contacted the Debtors and was told that the Medical TPP taken from the Warehouse did not belong to the Yorktown, and therefore, allegedly not subject to the terms of the APA. There is nothing in the APA which carves out any personal property.

9. Yorktown's representations in its SOFA clearly set forth that the Debtor was not holding property of another which ratifies that the Medical TPP is to be sold pursuant to the APA since it was located at the Yorktown Facility. The transfer of the equipment to another location was not subject to a motion and was without notice to creditors. Further, the move of Medical TPP was not in the ordinary course. On information and belief, the equipment was transferred to another Debtor's property.

10. However, even if the equipment was not owned by Yorktown but by another Debtor, the APA provides that sale includes any equipment "*located at or within*" the Yorktown Facility.

Headquarters

11. The Debtors and Greater Texas also have a disconnect on what FF&E located at the Headquarters was to be included in the APA.

12. Greater Texas alleges it was understood that the APA included all FF&E not just the FF&E on one floor.

13. The APA provides:

(v) (A) the furniture and medical equipment stored on the second floor of the Headquarters and listed in Schedule 2.01(a)(v) and (B) the furniture, fixtures and equipment located at the Desired Headquarters Space;

Page 16 of the APA, Doc. No. 484.

14. The APA refers to the Desired Headquarters Space as the leased premises and does not limit it to a floor.

15. The APA defines Desired Headquarters Space as follows:

(iv) a lease agreement between the Headquarters Lease Landlord and Buyer, on terms reasonably acceptable to Buyer, providing for Buyer's lease of up to 10,000 square feet of office space on the third floor of the Headquarters (the "*Desired Headquarters Space*"), duly executed by the Headquarters Lease Landlord; *provided, however*, in the event Buyer notifies Sellers pursuant to Section 5.04(c) that it does not intend to enter into a lease agreement for the Desired Headquarters Space, Sellers shall provide Buyer access to and use of the Desired Headquarters Space, rent-free and for transitional purposes and for all purposes in operating the Acquired Business, for a period of up to six weeks (6) following the Closing Date;

16. As shown above, the Desired Headquarters Space is broadly defined. Therefore, the transferred assets included all FF&E at the Desired Headquarters Space.

17. The Debtor has asserted that the only equipment to be transferred from the Desired Headquarters Space was the property on Schedule 2.01. Therefore, Greater Texas requests a finding that all equipment located at the Headquarters is subject to the sale.

RELIEF REQUESTED

18. Greater Texas' asserts that the Medical TPP taken by the Debtor(s) from the Warehouse should be returned to the Yorktown Facility prior to closing on the sale to Greater Texas.

19. Greater Texas further requests that the Court enter an Order to ratify that the tangible personal property which was moved from the Yorktown Facility is equipment to be sold to Greater Texas subject to the APA.

20. Greater Texas further requests an inventory of all equipment taken by the Debtors be provided to it by no later than November 4, 2018.

21. Closing on the APA is anticipated on November 5, 2018. As such, expedited relief is requested to ensure closing can finalize by that date.

WHEREFORE, Greater Texas requests that any and all tangible personal property, including but not limited to the Medical TPP, removed from the Yorktown Facility be returned to the Yorktown Facility, at Debtors' expense prior to November 5, 2018, and that the sale to Greater Texas shall include such personal property, as well as all personal property located at the Desired Headquarters Space regardless of which floor. Greater Texas requests any other relief the Court deems fair and equitable.

DATED: October 27, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion was served on the parties through the Court's ECF system on the parties listed below:

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/s/ Deirdre Carey Brown

Deirdre Carey Brown

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In Re: NEIGHBORS LEGACY HOLDINGS, INC. <i>et al.</i> , Debtors.	§ § § § § §	Chapter 11 Case No. 18-33836 (Jointly Administered)
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ORDER

(Relates to Docket No. __)

Came on for consideration, the *Greater Texas Emergency Centers LLC's Expedited Motion for Finding Regarding Asset Purchase Agreement* ("**Greater Texas**") ("**Motion**"), and the Court having considered the Motion, objections if any, applicable law and the Court's Order approving the sale of assets to Greater Texas (Doc. No. 484), finds the Motion should be granted:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. Debtors shall return all tangible personal property, including but not limited to the Medical TPP, taken from the Yorktown Facility ("**Yorktown Equipment**") to the Yorktown Facility by no later than November 4, 2018.
3. The Debtor shall file a notice which includes an inventory of the tangible personal property which was removed from the property by no later than November 4, 2018.
4. The Yorktown Equipment is hereby deemed to be part of the Transferred Assets pursuant to the APA approved by Doc. No. 484.
5. To the extent that the APA (Doc. No. 484) references Schedule 2.01, the APA shall be deemed to refer to the Schedule 2.01 found in Doc. No. 206.

Signed this _____ day of _____, 2018

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE